
Costs Decision

Site visit made on 6 December 2017

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 March 2018

Costs application in relation to Appeal Ref: APP/L3625/W/17/3181288 Rear of 17-23 Church Road, Horley RH6 7EY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Breeze Homes Ltd for a full award of costs against Reigate & Banstead Borough Council.
 - The appeal was against the refusal of planning permission for the erection of eight detached dwellings.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The guidance makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal.
3. PPG Paragraph 049 states further that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal, and also vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. In this particular instance the appeal was made on the basis of the Council's failure to reach a decision within the prescribed period. The proposed development had been modified and drawn up following a previous unsuccessful appeal for a scheme involving nine houses, where the Inspector had found against the development on two distinct grounds.
5. First, she had commented that the proposed layout at the rear of the site would be dominated by hard surfacing required for the parking and manoeuvring of vehicles which, she considered, contributed to it being a cramped form of development with insufficient provision of landscaping to soften its appearance. In addition, she found that the height of the flank wall to the proposed dwelling at Plot 2 would be too close to the shared boundary with Nos 14 and 16 Pine Gardens and thereby detrimental to the neighbouring occupiers.

6. In response, the revised design involved the amalgamation of the previously labelled Plots 8 and 9 to form a single plot and also Plot 2 widened to allow for the footprint of the proposed dwelling to be reconfigured and its flank wall significantly pulled back from the facing Pine Gardens properties. In my assessment of the scheme I found that the latter change illustrated that this specific area of concern had been effectively addressed.
7. From the information available to me the follow-up application showing the revised application was presented to the Council's Planning Committee on 5 July 2017 with a recommendation to grant planning permission. At this meeting, however, the minutes state that the committee resolved to defer determination to allow for a members' site inspection *'so that the impact of Plot 2 upon residents of Pine Gardens could be assessed.'*
8. The case was then reconsidered at the committee meeting of 26 July, at which members then resolved to overturn the officers' recommendation and refuse planning permission. However, the item was again deferred so that the reasons for refusal could be first drafted. Following this meeting, on 31 July, but before the reasons for refusal had been decided, the appeal was lodged on the basis of the Council's non-determination.
9. At its meeting on 6 September the committee finally resolved to refuse planning permission for two reasons; one relating to the consideration that the scheme represented a cramped form of development; and the other, that the garden of the dwelling at Plot 2 would be overlooked by the occupiers of residential properties in Pine Gardens.
10. The basis of this costs application is that the Council has failed to produce evidence to support its decision. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
11. Para 1.2 of the applicant's Statement of Case for the appeal says that it *'briefly addresses the concerns that have been raised by members of the Council's Planning Committee, on the basis that the reasons for refusal will be broadly along the lines of the discussion that has occurred at the two Committees that the application has so far been presented to.'*
12. From the content of the Statement it is clear that both the putative reasons for refusal, eventually decided upon by the Council, had been raised at the committee meetings and the reason relating to the character and appearance issue, formed the main part of the representations put forward. However, the second issue, referring to the considered effect on Plot 2's future occupiers, certainly in the manner stated, had not been previously raised in either the committee report or by the previous Inspector. The purpose of the site visit had, instead, been to ascertain the impact of Plot 2 on the Pine Gardens properties.
13. Irrespective of my decision as to the development itself I am satisfied that the first reason for refusal put forward by the Council remains a matter of balanced judgement. Despite the reduction in one dwelling the layout plan still shows a considerable amount of hardstanding and, although, when weighing up the factors, I agreed with the Officers' recommendation and found in favour of the proposal, the amount of built form has remained a particular concern of local

interested parties. In the circumstances, therefore, the planning committee, in assessing and weighing up the merits and impacts of the proposal, along with considering the representations of local interested parties, was quite entitled to come to the decision it did in relation to the character and appearance issue.

14. The second reason for refusal put forward, however, is a different matter. Overlooking of the side and rear gardens of Plot 2 from the facing Pine Gardens properties would have occurred with the previous nine dwelling scheme. The subsequent change to Plot 2, involving increasing the width of its side garden, did not change things in this regard, yet this particular issue was only introduced at the point that the committee debated the application. In my assessment, although I acknowledged that the garden would be visible from the facing first floor bedroom windows, the incidence would almost certainly be limited. Moreover, the relationship, although unusual in the local context, is not uncommon generally and, as such, the condition's wording in respect of the harm identified is somewhat over-stated.
15. The delay in the Council reaching its decision clearly brought about the non-determinaton appeal being lodged. However, as the applicant had witnessed the committee's discussions the issues of concern were apparent and covered in the submission. Accordingly, the privacy of Plot 2 is addressed in the papers. In terms of representations alone it is, though, a relatively minor issue and little is said, or indeed was necessary, in countering it.
16. Given the continued concerns about the scheme's layout as a whole, which remained a matter of judgement, the appeal would have ensued anyway. It would always then have been necessary for the applicant to refer to the site's planning history, drawing comparisons with and analysing the previous schemes in an attempt to lend support to the case. This remained the essence of the appeal.
17. Whilst, therefore, I consider that the Council acted unreasonably in introducing the privacy issue it did not cause any significant unnecessary expense given the particular circumstances involved. Therefore no award is made.

Timothy C King

INSPECTOR